

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HARRISON DIVISION

JAMES P. VICK

PLAINTIFF

v.

Civil No. 06-3067

C.E. "CHUCK" MEDFORD;
LT. BETH REELY;
SGT. ROB McGEE;
OFFICER MARK LOTT;
OFFICER MICHAEL BROWN;
OFFICER DEBBIE DAVIS;
OFFICER DAVE HENDERSON;
OFFICER DISHEROON;
DEPUTY JOHN RAINS;
DEPUTY GRET NOFSTGER;
PORTIA STINES (formerly known
as Portia Hill);
LISA ADAMS;
DEBBIE PRICE; et al.

DEFENDANTS

O R D E R

Now on this 8th day of January, 2008, comes on for consideration the **Report And Recommendation Of The Magistrate Judge** (document #116), and the Court, having carefully reviewed said Report And Recommendation, and the objections thereto, finds and orders as follows:

1. The Report And Recommendation addresses the Motion For Judgment On The Pleadings filed by separate defendant Officer Disheroon. The Magistrate Judge reports that plaintiff's complaint against Disheroon is only "that Disheroon specifically threatened to beat him. Plaintiff does not indicate anything occurred beyond the mere words of Disheroon's threat." Because

verbal threats are ordinarily not actionable under **§1983**, the Magistrate Judge recommended that plaintiff's claim against Disheroon in his individual capacity be dismissed. The Magistrate Judge also recommended that plaintiff's claim against Disheroon in his official capacity be dismissed, as there is nothing in the Complaint or any amendment thereto which implicates a policy of the Carroll County Sheriff's Office which is likely to result in a deprivation of constitutional rights.

2. Plaintiff objects to the Magistrate Judge's report that there was no death threat, stating that "Disheroon threatened the Plaintiff with actual death!" He goes on to say that given Disheroon's "violent history" and the agitation of other officers, he took the threat "in its most sincere meaning." To this, Disheroon responds that plaintiff "alleges a verbal threat that he would be 'beat,' nothing more," and that plaintiff's objections are an attempt to "contradict his prior allegations."

3. The Court has reviewed the various pleadings filed by plaintiff, and finds that he did, in fact, allege that Disheroon and another defendant, Deputy John Rains, threatened to "beat him to death" in his Amended Complaint filed on February 8, 2007. The incident allegedly occurred after plaintiff had escaped from the Carroll County jail, then returned on his own to the jail. Plaintiff alleged that Disheroon, a Berryville police officer, was frequently called to the Carroll County Sheriff's Office "to

provide a show of force, and was indeed a very physically large muscular officer" whom he had witnessed physically abuse other prisoners. He further alleged that another deputy "interceded" in the matter, which he believes prevented Disheroon and Rains from carrying out the alleged threat.

4. The allegations here fall somewhere between those of **Martin v. Sargent**, 780 F.2d 1334 (8th Cir. 1985) (threat involving loss of privileges not actionable under §1983) and **Burton v. Livingston**, 791 F.2d 97 (8th Cir. 1986) (death threat by guard holding pistol and using racial epithets, in retaliation for exercise of protected rights, is actionable). Given that the alleged motivation of Disheroon was not plaintiff's exercise of a protected right, but rather plaintiff's escape from jail, the Court finds that this case is more like **Martin** than **Burton**, and that plaintiff's pleadings fail to state an actionable claim against Disheroon in his individual capacity.

There are no further objections to the Report And Recommendation, and the Court finds that it is sound in all respects, and should be adopted *in toto*.

IT IS THEREFORE ORDERED that the **Report And Recommendation Of The Magistrate Judge** is adopted *in toto*.

IT IS FURTHER ORDERED that plaintiff's objections to the Report And Recommendation are without merit, and are **overruled**.

IT IS FURTHER ORDERED that, for the reasons stated in the

Report And Recommendation Of The Magistrate Judge, separate defendant Officer Disheroon's Motion For Judgment On The Pleadings (document #48) is **granted,** and plaintiff's claims against Disheroon are **dismissed.**

IT IS SO ORDERED.

/s/ Jimm Larry Hendren
JIMM LARRY HENDREN
UNITED STATES DISTRICT JUDGE